

# Legislative Analysis



## **MICHIGAN BUSINESS TAX BROWNFIELD CREDIT REVISIONS; MICHIGAN ECONOMIC GROWTH AUTHORITY PROTOCOLS**

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### **House Bill 5511**

**Sponsor: Rep. Ed Clemente**

**Committee: New Economy and Quality of Life**

**Complete to 12-6-07**

### **A SUMMARY OF HOUSE BILL 5511 AS INTRODUCED 12-5-07**

House Bill 5511 would amend the Michigan Business Tax to, among other things, increase brownfield development tax credits; modify the project review protocols of the Michigan Economic Growth Authority; and provide new definitions for the terms "eligible property" and "urban development area project." The bill would take effect January 1, 2008. A more detailed explanation of the bill follows.

Currently under the law, a qualified taxpayer may claim a brownfield development tax credit if there are unused credits or a pre-approval letter issued on or before certain dates, or the taxpayer has not received a certificate of completion for a project that will be completed no more than five years after a pre-approval letter is received. House Bill 5511 would retain these provisions, and specify that a multi-phase project would have to be completed no more than 10 years after a pre-approval letter was received.

The credits for which the taxpayer is eligible are described under the current law, and they differ depending upon the total cost of the project. For example, if the total of all credits for a project is \$1 million or less, the credit can be 10 percent of the cost of the eligible investment on an eligible property provided that the project does not exceed the amount stated in the pre-approval letter. House Bill 5511 would modify this provision, to specify that it would apply to projects approved before January 1, 2008. Then the bill would add a new credit for projects approved on or after that date. After January 1, 2008, the credit could be up to 12.5 percent of the costs of the investment paid, or up to 15 percent of the costs, if the project was designated as an urban development area project by the chairperson of the Michigan Economic Growth Authority (provided the project did not exceed the amount stated in the pre-approval letter). Further, if the total of all credits for a project is more than \$1 million but \$30 million or less, the law allows a credit of up to a 10 percent if the project is located in a qualified local governmental unit, as determined by the Michigan Economic Growth Authority. House Bill 5511 would modify this provision to specify that the current credit would apply to projects approved before January 1, 2008. Then the bill would add a new credit for projects approved on or after that date. After January 1, 2008, the credit could be up to 15 percent, determined by the Michigan Economic Growth Authority. However, the credit could not exceed 12.5 percent of the cost unless the project was designated as an urban development area project by the chairperson of the Michigan Economic Growth Authority. House Bill

5511 would also eliminate the current requirement that the total of all credits for all projects shall not exceed \$10 million in any calendar year, as well as the language that allows the authority to apply credits valued at up to \$10 million over two years.

Currently under the law, the Michigan Economic Growth Authority is required to adopt changes to its form by resolution, giving notice to the secretary of the Senate, the clerk of the House, and to all who request notification, either in writing or electronically. Further, the information must be published on the authority's website, and a public hearing must be held no earlier than 14 days nor later than 30 days after notice has been given. The authority must then wait to act on the resolution until at least 14 days after the hearing, and then must produce a final decision document that describes the basis for its decision. That final decision document (with all attachments) must be provided to the secretary of the Senate and clerk of the House, and published on the authority's website, with an invitation to offer written (and mailed) or electronically transmitted comments. House Bill 5511 would eliminate these provisions.

Currently the law specifies that if the cost of a project will be more than \$2 million but \$10 million or less, a qualified taxpayer must apply to the Michigan Economic Growth Authority for approval of the project. If the chairperson does not approve or deny the application within 45 days, the project is considered approved as written. The total of all credits for all projects approved under this section of the act cannot exceed \$30 million in any calendar year, although the credits can be carried forward for one year if the total is not reached in the project's first year. House Bill 5511 would eliminate these provisions.

Under the law, the Michigan Growth Authority can approve up to 17 projects, and the following limitations apply: Of the 17 projects, (a) the total of all credits for each project may be more than \$10 million but \$30 million or less for up to two projects; (b) up to three projects may be approved for projects that are not in a qualified local governmental unit is the property is a facility identified in a brownfield plan, or is not a facility but is functionally obsolete or blighted; (c) of the two projects in (a), one may also qualify under (b). House Bill 5511 would revise these provisions to allow up to 20 projects, only one of whose total credits could be more than \$10 million but less than \$30 million. That one project allowed under (a) could also qualify under (b).

Currently under the law, the Michigan Economic Growth Authority must review all applications for projects, and 10 evaluation criteria that the chairperson must consider are described in the law. House Bill 5511 would retain nine of those criteria, and modify one criterion. Currently one of the criteria requires that the chairperson consider whether the financial statements of the qualified taxpayer indicate that the project is financially and economically sound. House Bill 5511 would alter that criterion to require instead that the chairperson consider whether the *project* is financially and economically sound.

Currently under the law, a project may be a multiphase project. After each component of the multiphase project is completed, the taxpayer submits documentation of completion, an accounting of the cost, the eligible investment for the component of each taxpayer eligible for a credit, and who will verify that the component is complete. The law allows

a multiphase project to be divided in up to 20 components. House Bill 5511 would modify this provision, and allow instead up to 10 components. A component is considered to be complete when a certificate of occupancy is issued by the local municipality. House Bill 5511 would revise this provision to allow either a certificate of occupancy, or verification of completion by the chairperson of the Michigan Economic Growth Authority, or the Michigan Economic Growth Authority, depending upon the eligible project.

House Bill 5511 specifies that beginning on and after January 1, 2008, if a credit allowed for the tax year exceeds the taxpayer's tax liability, the taxpayer could elect to have the excess refunded at a rate equal to 75 percent of that portion of the credit that exceeds the tax liability, and forgo the remaining 25 percent of the credit and any carry-forward.

Currently under the law, projects developed under certain sections for which a certificate of complete are issued on and after January 1, 2006, allow a taxpayer to assign all or a portion of a credit. A credit assignment is irrevocable, and made in the tax year in which a certificate of completion is issued. Also the law currently prohibits the assignment of a credit after 10 years from the first tax year in which the credit was claimed, and the taxpayer must send a copy of the completed assignment form to the Michigan Economic Growth Authority. House Bill 5511 would eliminate these two provisions. Instead, the authority would review and issue a completed assignment or reassignment certificate to the assignee or re-assignee.

Currently the law allows the Michigan Economic Growth Authority to certify a credit based on an agreement entered into prior to January 1, 2008, pursuant to Public Act 228 of 1975. The number of years for which the credit can be claimed is equal to the maximum number of years designated in the agreement reduced by the number of years for which a credit has been claimed, or could have been claimed. House Bill 5511 would eliminate this provision.

The bill requires that when reviewing an application for a project for designation as an Urban Development Area Project, the chairperson of the Michigan Economic Growth Authority consider all of the following criteria:

- If the project increases the density of the area by promoting multi-story development.
- If the project promoted mixed-use development and walkable communities.
- If the project promotes sustainable redevelopment.
- If the project addresses area-wide redevelopment and includes multiple parcels or property.
- If the project addresses underserved markets of commerce.
- Any other criteria determined by the chairperson of the Michigan Economic Growth Authority.

Currently, the Michigan Economic Growth Authority prepares an annual report that is submitted to the House of Representatives and Senate committees responsible for tax

policy and economic development. House Bill 5511 retains that provision, and would require that the authority include in that report a list of all projects allowed under the act, as amended by this legislation.

House Bill 5511 specifies that the total of all credits for all projects approved under the sections proposed by this legislation shall not exceed \$40 million in any calendar year. If that authority approved a total of all credits for all projects of less than \$40 million, then it could carry forward for one year only the difference between \$40 million and the total of all credits for all projects approved in the immediately preceding calendar year.

The bill would eliminate the reference for the definitions of "authorized business," "full time job", "new capital investment", "qualified high technology business", "retained jobs", and "written agreement" as defined in the Michigan Economic Growth Authority Act.

The bill also would modify the definition for "eligible investment" to specify that the definition would apply "after the date that the pre-approval letter is issued." Further, it would specify that for projects approved after January 1, 2008, eligible investment does not include certain soft costs of the eligible investment as determined by the Michigan Economic Growth Authority, including but not limited to, developer fees, appraisals, performance bonds, closing costs, bank fees, loan fees, risk contingencies, financing costs, permanent or construction period interest, legal expenses, leasing or sales commissions, marketing costs, professional fees, shared savings, taxes, title insurance, bank inspection fees, insurance, and project management fees.

The bill would eliminate the current definition for "eligible property". Instead, the term "eligible property" would be defined to mean property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, or residential purposes, including personal property located on the property, to the extent included in the brownfield plan, and that is one or more of the following: (i) is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property; (ii) is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of the adjacent and contiguous parcels is estimated to increase the captured taxable value of that property; (iii) is tax reverted property owned or under the control of a land bank fast track authority.

The bill also specifies that for the purposes of subsection 2, eligible property means that term as defined above, except that all of the following would apply:

Eligible property means property identified under a Brownfield Plan that was used or is currently used for commercial, industrial, or residential purposes and that is one of the following:

- (i) property for which eligible activities are identified under the Brownfield Plan , is in a qualified local governmental unit, and is a facility, functionally obsolete, or blighted;
- (ii) property that is not in a qualified local governmental unit but is within a downtown development district established under Public Act 197 of 1975, and is functionally obsolete or blighted, and a component of the project on that eligible property is one or more of the following: (A) infrastructure improvements that directly benefit the eligible property; (B) demolition of structures that is not response activity under the Natural Resources and Environmental Protection Act; (C) lead or asbestos abatement; (D) site preparation that is not responsive activity under the Natural Resources and Environmental Protection Act;
- (iii) property for which eligible activities are identified under the Brownfield Plan, is not in a qualified local governmental unit, and is a facility.

The bill continues, eligible property includes parcels that are adjacent or contiguous to the eligible property if the development of the adjacent or contiguous parcels is estimated to increase the captured taxable value of the property or tax reverted property owned or under control of a land bank fast track authority pursuant to the Land Bank Fast Track Authority Act. Eligible property includes, to the extent included in the Brownfield plan, personal property located on the eligible property. The bill also specifies that eligible property does *not* include qualified agricultural property exempt under section 7ee of the General Property Tax Act, from the tax levied by a local school district for school operating purposes to the extend provided under the Revised School Code.

Finally, the bill would provide a new definition for the phrase "urban development area project" which would be defined to mean a project located on eligible property in the downtown or traditional central business district of a qualified local governmental unit or along a historical commercial corridor of a qualified local governmental unit as determined by the chairperson of the Michigan Economic Growth Authority or his or her designee.

MCL 208.1437

**FISCAL IMPACT:**

A fiscal analysis is in progress.

Legislative Analyst: J. Hunault

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.